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SENATE BILL 281

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Bernadette M. Sanchez

AN ACT

RELATING TO THANATOPRACTICE; EXPANDING THE SCOPE OF PRACTICE OF
DIRECT DISPOSERS; AMENDING SECTIONS OF THE THANATOPRACTICE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 61-32-3 NMSA 1978 (being Laws 1993,
Chapter 204, Section 3, as amended) is amended to read:

"61-32-3. DEFINITIONS.--As used in the Thanatopractice
Act:

A. "assistant funeral service practitioner" means a
person licensed to engage in practice at a funeral
establishment or commercial establishment, licensed pursuant to
the Thanatopractice Act, as an assistant funeral service
practitioner as provided in that act;

B. "associate funeral service practitioner" means a
person licensed to engage in practice at a funeral

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1 establishment or commercial establishment, licensed pursuant to
2 the Thanatopractice Act, as an associate funeral service
3 practitioner as provided in that act;

4 C. "board" means the board of thanatopractice;

5 D. "committal service" means a service at a place
6 of interment or entombment [~~that~~] whether or not it follows a
7 funeral conducted at another location;

8 E. "cremains" means cremated remains;

9 F. "cremation" means the reduction of a dead human
10 body by direct flame to a residue, which includes bone
11 fragments;

12 G. "crematory" means every place or premises that
13 is devoted to or used for cremation and pulverization of the
14 cremains;

15 H. "crematory authority" means the individual who
16 is ultimately responsible for the operation of a crematory;

17 I. "department" means the regulation and licensing
18 department;

19 J. "direct disposer" means a person licensed to
20 engage [~~solely~~] in providing direct disposition at a direct
21 disposition establishment, licensed pursuant to the
22 Thanatopractice Act, as provided in that act;

23 K. "direct disposition" means [~~only~~] the
24 disposition of a dead human body as quickly as possible,
25 [~~without a funeral, graveside service, committal service or~~

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1 ~~memorial service whether public or private]~~ which may include a
2 funeral with cremains, a committal service or a memorial
3 service and without embalming of the body unless embalming is
4 required by the place of disposition;

5 L. "direct supervision" means the supervising
6 funeral service practitioner is physically present with and in
7 direct control of the person being trained;

8 M. "disposition" means the final disposal of a dead
9 human body, whether it be by earth interment, above-ground
10 interment or entombment, cremation, burial at sea or delivery
11 to a medical school, when the medical school assumes complete
12 responsibility for the disposal of the body following medical
13 study;

14 N. "embalming" means the disinfection, preservation
15 and restoration, when possible, of a dead human body by a
16 licensed funeral service practitioner, a licensed associate
17 funeral service practitioner or a licensed funeral service
18 intern under the supervision of a licensed funeral service
19 practitioner;

20 O. "ennichement" means interment of cremains in a
21 niche in a columbarium, whether in an urn or not;

22 P. "entombment" means interment of a casketed body
23 or cremains in a crypt in a mausoleum;

24 Q. "establishment" means every office, premises or
25 place of business where the practice of funeral service or

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1 direct disposition is conducted or advertised as being
2 conducted and includes commercial establishments that provide
3 for the practice of funeral service or direct disposition
4 services exclusively to licensed funeral or direct disposition
5 establishments or a school of medicine;

6 R. "funeral" means a period following death in
7 which there is an organized, purposeful, time-limited,
8 group-centered ceremony or rite, whether religious or not, with
9 the body or the cremains of the deceased present;

10 S. "funeral merchandise" means that personal
11 property offered for sale in connection with the
12 transportation, funeralization or disposition of a dead human
13 body, including the enclosure into which a dead human body is
14 or cremains are directly placed, and excluding mausoleum
15 crypts, interment enclosures preset in a cemetery and
16 columbarium niches;

17 T. "funeral service intern" means a person licensed
18 to be in training for the practice of funeral service under the
19 supervision and instruction of a funeral service practitioner
20 at a funeral establishment or commercial establishment,
21 licensed pursuant to the Thanatopractice Act;

22 U. "funeral service practitioner" means a person
23 licensed to engage in the practice of funeral service at a
24 funeral establishment or commercial establishment, licensed
25 pursuant to the Thanatopractice Act, as provided in that act;

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1 V. "general supervision" means the supervising
2 funeral service practitioner is not necessarily physically
3 present in the establishment with the person being trained, but
4 is available for advice and assistance;

5 W. "graveside service" means a funeral held at the
6 graveside only, excluding a committal service that follows a
7 funeral conducted at another location;

8 X. "jurisprudence examination" means an examination
9 prescribed by the board on the statutes, rules and regulations
10 pertaining to the practice of funeral service or direct
11 disposition, including the Thanatopractice Act, the rules of
12 the board, state health regulations governing human remains and
13 the Vital Statistics Act;

14 Y. "licensee in charge" means a funeral service
15 practitioner who is ultimately responsible for the conduct of a
16 funeral or commercial establishment and its employees or a
17 direct disposer who is ultimately responsible for the conduct
18 of a direct disposition establishment and its employees;

19 Z. "make arrangements" means advising or counseling
20 about specific details for a funeral, graveside service,
21 committal service, memorial service, disposition or direct
22 disposition;

23 AA. "memorial service" means a gathering of persons
24 for recognition of a death without the presence of the body or
25 cremains of the deceased;

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1 BB. "practice of funeral service" means those
2 activities allowed under the Thanatopractice Act by a funeral
3 service practitioner, associate funeral service practitioner,
4 assistant funeral service practitioner or funeral service
5 intern;

6 CC. "pulverization" means the process that reduces
7 cremains to a granular substance; and

8 DD. "thanatopractice" means those immediate post-
9 death activities related to the dead human body, its care and
10 disposition, whether with or without rites or ceremonies, but
11 not including disposition of the body by a school of medicine
12 following medical study."

13 SECTION 2. Section 61-32-5 NMSA 1978 (being Laws 1993,
14 Chapter 204, Section 5, as amended) is amended to read:

15 "61-32-5. BOARD CREATED.--

16 A. There is created the "board of thanatopractice".

17 B. The board is administratively attached to the
18 department.

19 C. The board consists of six members. [~~Three~~] Two
20 members shall be funeral service practitioners who have been
21 licensed in this state for at least five years; [~~two members~~]
22 one member shall represent the public and shall not have been
23 licensed for the practice of funeral service or direct
24 disposition in this state or any other jurisdiction and shall
25 not ever have had any financial interest, direct or indirect,

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1 in any funeral, commercial or direct disposition establishment
2 or crematory; [~~and one member~~] two members shall be [~~a~~]
3 licensed direct [~~disposer or~~] disposers who have been licensed
4 in this state for at least five years; and one member shall be
5 a health care practitioner who has been licensed in this state
6 for at least five years.

7 D. Members of the board shall be appointed by the
8 governor for terms of four years. Each member shall hold
9 office until [~~his~~] the member's successor is duly qualified and
10 appointed. Vacancies shall be filled for [~~any~~] an unexpired
11 term in the same manner as original appointments.

12 E. Members of the board shall be reimbursed as
13 provided in the Per Diem and Mileage Act and shall receive no
14 other compensation, perquisite or allowance.

15 F. A simple majority of the board members currently
16 serving constitutes a quorum.

17 G. The board shall hold at least two regular
18 meetings each year and shall meet at such other times as it
19 deems necessary.

20 H. No board member shall serve more than two full
21 consecutive terms. The board shall recommend removal of any
22 board member who has three unexcused absences from properly
23 noticed meetings within a twelve-month period and may recommend
24 removal of a board member for any other just cause.

25 I. The board shall elect a [~~chairman~~] chair and

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1 other officers as deemed necessary to administer its duties."

2 SECTION 3. Section 61-32-17 NMSA 1978 (being Laws 1993,
3 Chapter 204, Section 17, as amended) is amended to read:

4 "61-32-17. DIRECT DISPOSER--SCOPE OF PRACTICE--
5 LIMITATIONS.--

6 A. Except as otherwise provided in the
7 Thanatopractice Act, a direct disposer may transport and
8 dispose of a dead human body and participate in any rites or
9 ceremonies after final disposition of the body.

10 B. Prior to interment, entombment or other final
11 disposition of the body or cremains, a direct disposer [~~shall~~
12 ~~not~~] may:

13 (1) participate in any rites or ceremonies in
14 connection with the final disposition of the body;

15 (2) provide facilities for any such rites or
16 ceremonies; and

17 (3) have the body embalmed [~~unless~~] if
18 embalming is required by the place of disposition."

19 SECTION 4. Section 61-32-24 NMSA 1978 (being Laws 1993,
20 Chapter 204, Section 24, as amended) is amended to read:

21 "61-32-24. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW.--

22 A. The board, in accordance with the procedures set
23 forth in the Uniform Licensing Act, may take disciplinary
24 action against any licensee, temporary licensee or applicant.

25 B. The board has the authority to take any action

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1 set forth in Section 61-1-3 NMSA 1978 upon a finding by the
2 board that the applicant or licensee is guilty of any of the
3 following acts of commission or omission:

4 (1) conviction of an offense punishable by
5 incarceration in a state penitentiary or federal prison,
6 provided the board receives a copy of the record of conviction,
7 certified to by the clerk of the court entering the conviction,
8 which shall be conclusive evidence of the conviction;

9 (2) fraud or deceit in procuring or attempting
10 to procure a license;

11 (3) gross negligence or incompetence;

12 (4) unprofessional or dishonorable conduct,
13 which includes:

14 (a) misrepresentation or fraud;

15 (b) false or misleading advertising;

16 (c) solicitation of dead human bodies by
17 the licensee, [~~his~~] or the licensee's agents, assistants or
18 employees, whether the solicitation occurs after death or while
19 death is impending, provided that this shall not be deemed to
20 prohibit general advertising;

21 (d) solicitation or acceptance by a
22 licensee of [~~any~~] a commission, bonus or rebate in
23 consideration of recommending or causing a dead human body to
24 be disposed of in [~~any~~] a cemetery, mausoleum or crematory;

25 (e) using any funeral merchandise

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1 previously purchased, in whole or in part, except for
2 transportation purposes, without prior written permission of
3 the person selecting or paying for the use of the merchandise;
4 and

5 (f) failing to make disposition of a
6 dead human body in the enclosure or container that was
7 purchased for that purpose by the arrangers;

8 (5) violation of ~~[any of]~~ the provisions of
9 the Thanatopractice Act or ~~[any]~~ a rule of the board;

10 (6) violation of any local, state or federal
11 ordinance, law or regulation affecting the practice of funeral
12 service, direct disposition or cremation, including the
13 Prearranged Funeral Plan Regulatory Law or any regulations
14 ordered by the superintendent of insurance;

15 (7) willful or negligent practice beyond the
16 scope of the license issued by the board;

17 (8) refusing to release properly a dead human
18 body to the custody of the person or entity who has the legal
19 right to effect the release, when the authorized cost has been
20 paid;

21 (9) failure to secure a necessary permit
22 required by law for removal from this state or cremation of a
23 dead human body;

24 (10) knowingly making a false statement on a
25 certificate of death;

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1 (11) failure to give full cooperation to the
2 board or one of its committees, staff, inspectors, agents or an
3 attorney for the board in the performance of official duties;

4 (12) ~~has~~ having had a license, certificate
5 or registration to practice revoked, suspended or denied in any
6 jurisdiction, territory or possession of the United States or
7 another country for actions of the licensee or applicant
8 similar to acts described in this subsection. A certified copy
9 of the record of the jurisdiction taking the disciplinary
10 action is conclusive evidence of the violation;

11 (13) failure to supervise adequately
12 subordinate personnel;

13 (14) conduct unbecoming a licensee or
14 detrimental to the safety or welfare of the public;

15 (15) employing fraudulent billing practices;
16 or

17 (16) practicing funeral service, direct
18 disposition or cremation without a current license.

19 C. In addition to the offenses listed in Subsection
20 B of this section, the board has the authority to take any
21 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
22 the board that a person who is licensed as or is an applicant
23 for a license as a funeral service practitioner, associate
24 funeral service practitioner, assistant funeral service
25 practitioner or funeral service intern is guilty of any of the

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1 following acts of commission or omission:

2 (1) practicing funeral service without a
3 license or aiding or abetting an unlicensed person to practice
4 funeral service; or

5 (2) permitting an associate funeral service
6 practitioner, assistant funeral service practitioner or a
7 funeral service intern to exceed the limitations set forth in
8 the provisions of the Thanatopractice Act or the rules of the
9 board.

10 D. In addition to the offenses listed in Subsection
11 B of this section, the board has the authority to take any
12 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
13 the board that a direct disposer licensee or applicant or a
14 direct disposition establishment licensee or applicant is
15 guilty of any of the following acts of commission or omission:

16 (1) embalming, restoring, acting as a
17 cosmetician or in any way altering the condition of a dead
18 human body, except for washing and dressing;

19 (2) causing a body to be embalmed when
20 embalming is not required by a place of disposition;

21 [~~(3) prior to interment, entombment or other~~
22 ~~final disposition of a dead human body, participating in any~~
23 ~~rites or ceremonies in connection with such final disposition~~
24 ~~of the body, or providing facilities for any such rites or~~
25 ~~ceremonies;~~

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1 ~~(4)~~ (3) reclaiming, transporting or causing
2 to be transported a dead human body after written release for
3 disposition; or

4 ~~(5)~~ (4) practicing direct disposition
5 without a license or aiding or abetting an unlicensed person to
6 practice direct disposition.

7 E. In addition to the offenses listed in Subsection
8 B of this section, the board has the authority to take any
9 action set forth in Section 61-1-3 NMSA 1978 upon a finding by
10 the board that a crematory licensee or applicant or a crematory
11 authority is guilty of any of the following acts of commission
12 or omission:

13 (1) engaging or [~~holding oneself out~~] making
14 any representation as engaging in the practice of funeral
15 service or direct disposition, unless the applicant or
16 crematory authority has a license to practice funeral service
17 or direct disposition;

18 (2) operating a crematory without a license or
19 aiding and abetting a crematory to operate without a license;
20 or

21 (3) engaging in conduct or activities for
22 which a license to engage in the practice of funeral service or
23 direct disposition is required or aiding and abetting an
24 unlicensed person to engage in conduct or activities for which
25 a license to practice funeral service or direct disposition is

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1 required.

2 F. Unless exonerated by the board, persons who have
3 been subjected to formal disciplinary sanctions by the board
4 shall be responsible for the payment of costs of the
5 disciplinary proceedings, which include costs for:

- 6 (1) court reporters;
- 7 (2) transcripts;
- 8 (3) certification or notarization;
- 9 (4) photocopies;
- 10 (5) witness attendance and mileage fees;
- 11 (6) postage for mailings required by law;
- 12 (7) expert witnesses; and
- 13 (8) depositions.

14 G. All fees, fines and costs imposed on an
15 applicant, licensee, establishment or crematory shall be paid
16 in full to the board before an initial or renewal license may
17 be issued."